

The Examiner contends that the term “enclosure” should be given “the broadest reasonable interpretation,” and that in this case it is reasonable to interpret the claimed “enclosure” of two or more audio speakers as a room or listening area in which two or more audio speakers are placed. It is respectfully submitted that this is clearly in error.

The Definition of “Enclosure” Asserted Herein is
Consistent with the Present Application Specification

The test given in the Manual of Patent Examining Procedure (M.P.E.P.) section 2111 (Rev. 3, August 2005) is that pending claims must be given their “broadest reasonable interpretation consistent with the specification,” citing *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). It is respectfully submitted that the Examiner’s broad interpretation of an audio speaker “enclosure” to include a listening area or room is not consistent with its use in the specification. Indeed, this is opposite to its use in the specification, so cannot be a *reasonable* interpretation of the term *consistent with the specification*.

It has already been pointed in a prior response out that the present application uses the term “enclosure” to reference various forms of a structure that contains two or more audio speakers. The description of Figure 3, for example, references an “enclosure 30” of audio speakers 13 and 14 directing sound toward a listener 10 positioned in a “listening area.” (See present application, paragraph from page 8, line 26 to page 9, line 6.) The Examiner’s definition of the speaker “enclosure” to include “listening area” is therefore contrary to the way the terms are used in the present application.

The term “enclosure” is used in a consistent manner throughout the application. It is used to describe structures containing the audio speakers, elements variously identified by the reference numbers 30, 30’, 30’’, 60, 76, 83 and 84 in Figures 3, 5, 6, 8a, 8b, 9b, 10 and 11. One or more of these speaker enclosures is described to be positioned within or adjacent to a “listening area” (page 9, line 2; page 16, line 30), “listening space” (page 16, line 27) or in a “room” (page 12, line 19) that has its own acoustic characteristics. The speaker “enclosure” is clearly described in the specification as something that is used to provide sound to a listening area, listening space or room. The speaker “enclosure” is described to be something different from the listening area, listening space and room. So it is not understood how the Examiner can interpret term “enclosure” to be the “room” that the specification expressly describes as

something different. It is therefore respectfully submitted that the Examiner's interpretation of the claimed "enclosure" is not a *reasonable* interpretation of the term *consistent with the specification*.

The specification is properly being referenced to ascertain the intended scope of the term "enclosure" as used in the claims. The term "housing" is used in the specification to identify components of the speaker enclosure, rather than as a synonym for "enclosure." With respect to the embodiment illustrated in Figure 3, for example, the speakers 13 and 14 are described to be "in special housings" (page 9, line 5) within the overall enclosure 30. Similarly, in a description of Figure 6, the speaker drivers 13 and 14 are said to be in "matched housings" (page 12, line 30) within a speaker enclosure 30, 30' and 30".

A *reasonable* interpretation of "enclosure" *consistent with the specification* requires that the term be interpreted as a structure in which audio speakers are enclosed, schematically illustrated as boxes in the various figures, that is positioned adjacent a listening area. The listening area or room of the cited Swartz patent cannot therefore be the claimed "enclosure."

The Ordinary and Customary Meaning Given to Speaker "Enclosure" by Those of Ordinary Skill in the Art is Consistent with the Above-Described Use in the Specification

A technique for determining the meaning of a pending application claim term given in M.P.E.P. 2111.01(II) is to refer to the "ordinary and customary meaning that the term would have to a person of ordinary skill in the art in question" at the time of filing the application, citing several decisions of the Court of Appeals for the Federal Circuit. In addition to the application itself and its prosecution history, the ordinary and customary meaning of a term in the field of the invention may be evidenced by a variety of extrinsic sources.

One such source discussed herein is literature published prior to the June 4, 1999 filing date of the present application and that describes audio speaker systems. Five books, identified in an accompanying Supplemental Information Disclosure Statement (Supplemental IDS) along with the search technique used to locate them, are being filed herewith as evidence of the ordinary and customary meaning of speaker "enclosure" to those of ordinary skill in the audio speaker art prior to 1999.

These books use the term "enclosure" to reference a box or other structure in which one or more audio speakers are installed. A scan of any of these books reveals this. The term

“enclosure” is frequently used, some instances of this use being listed in the accompanying Supplemental IDS. The titles of three of the books are *How to Build Speaker Enclosures*, *21 Custom Speaker Enclosure Projects You Can Build*” and *Building Speaker Enclosures*. Chapter titles within the books include “Loudspeaker Enclosure Types,” “Enclosure Design and Construction,” and “Five Basic Enclosure Types.” The term “enclosure” is used in these instances to refer to a box or other structure containing one or more audio speakers. The 1997 book (#5) by David B. Weems contains a glossary that includes a definition of “enclosure” on page 213: “The box that contains the woofer, tweeter, and any other drivers used in a speaker system.”

It is therefore respectfully submitted that this evidence of how those skilled in the art used the term “enclosure” compels the conclusion that it is a box or other similar structure. The present application specification also uses the term in the same way. Enclosure 30 of Figure 3, for example, is a structure in which audio speakers are installed that is similar to the boxes and other structures described and illustrated throughout each of the five books being filed herewith. No reference to a listening area or room as a speaker “enclosure” has been noted in any of these five books. Rather, boxes identified as speaker “enclosures” described and illustrated throughout these five books are in the same class as the “speaker cabinets 2 and 3” of the cited Schwartz patent (containing speakers 5, 5’, 5” and 5’’). The claimed enclosures are *not* the room in which the Schwartz speaker cabinets are located. The Schwartz patent cannot therefore anticipate the rejected claims.

The Definition of “Enclosure” Asserted Herein Creates

Prosecution History That Will Determine the Scope of the Claims

Should a patent be granted with the present application claims, the meaning and scope of the claim term “enclosure” would be interpreted as described above and, in addition, with use of its prosecution history. It cannot be imagined that “enclosure” would be interpreted in any way other than as being asserted herein, since relevant prosecution history is being created by the assertion.

M.P.E.P. section 2111.01(II), page 2100-49 of Rev. 3, August 2005, suggests toward the bottom of the left column, that prosecution history should be considered in the USPTO during examination of the application, but citing an appeal from a District Court in an infringement

case, e.g., *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1324, 57 USPQ2d 1889, 1894 (Fed. Cir. 2001). The prosecution history being made by this and prior responses would have to be considered when interpreting the term "enclosure" in any claims granted from the present application. This prosecution history will compel that "enclosure" be interpreted with the narrow scope being asserted herein.

The Corresponding European Patent Application Was Granted
Without Concern Over the Term "Enclosure"

European patent no. 1 183 911 B1 was granted September 8, 2004, on an application claiming priority from the present application. A copy of this patent is being filed with the accompanying Supplemental IDS. No question was raised during prosecution before the European Patent Office of the scope of the term "enclosure" as used in its claims.

Conclusion

For the reasons given above, it is believed that the present application is in condition for allowance and an early indication of its allowance is solicited. However, if not allowed, entry of the accompanying Supplemental IDS and listed references are respectfully requested in order to supplement the record for appeal.

Respectfully submitted,



Gerald P. Parsons
Reg. No. 24,486

February 23, 2006

Date

PARSONS HSUE & DE RUNTZ LLP
595 Market Street, Suite 1900
San Francisco, CA 94105
(415) 318-1160 (main)
(415) 318-1163 (direct)
(415) 693-0194 (fax)